

**Response To Comments  
for  
GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH  
CONSTRUCTION ACTIVITY  
MPDES Permit MTR100000  
March 16, 2007**

On October 19, 2006 the Department of Environmental Quality (DEQ) issued Public Notice MT-06-28 stating the DEQ's intent to issue the Montana Pollutant Discharge Elimination System (MPDES) *General Permit for Storm Water Discharges Associated with Construction Activity* (General Permit). The Public Notice stated that the DEQ had prepared a draft General Permit, Fact Sheet, Environmental Assessment, and would hold a Public Hearing on this matter on November 17, 2006 at the DEQ's Metcalf Building in Helena, Montana. The Public Notice required that all comments received or postmarked by November 20, 2006 would be considered in the formulation of a final decision and issuance of the General Permit.

The DEQ received two written sets of comments on the MPDES General Permit. One comment letter was from Loren Frazier, Chief Engineer with the Montana Department of Transportation (hereafter referred to as MDT). The other written comment letter was from Todd Senescall, Staff Engineering Assistant with WBI Holdings, Inc. (hereafter referred to as WBI). There were two parties which provided comment at the November 17, 2006 Public Hearing. One was Michael Kakuk, representing the Montana Contractors Association (MCA), and the other was Jean Riley with MDT. The DEQ has prepared a response to all significant comments as required by Administrative Rules of Montana (ARM) 17.30.1377. The DEQ has considered these comments in the preparation of the final permit and decision.

**RESPONSE TO COMMENTS**

**Comment #1:**

General Comment: In the Preamble of the draft General Permit, there is a new paragraph pertaining to a "single owner/operator obtaining authorization under the General Permit", rather than multiple owners and/or operators obtaining coverage as appropriate. Due to the contractual relationship between MDT and its Contractors and the differing responsibilities to ensure daily activities comply with the General Permit conditions, it is appropriate for MDT and its Contractors to obtain General Permit coverage as co-permittees. In addition, if MDT's Contractor has an off-site material source or waste site, it is appropriate that the Contractor obtain separate coverage under the General Permit for these off-site locations in which MDT has no control. As stated in ARM 17.30.1115(a), "The NOI must be signed by the owner of the project or by the operator, or by both the owner and the operator if both have responsibility to ensure that daily project activities comply with the SWPPP and other General Permit conditions. If more than one operator is responsible for compliance with the SWPPP and General Permit each operator shall sign the NOI." For these reasons, the word "single" should be deleted. (MDT)

**Response:** While the Preamble to the General Permit does not establish any regulatory condition it does summarize the requirements of the permit. The Department is requiring that a single entity referred to as the owner or operator, as defined in the Montana Water Quality Act (WQA) be responsible obtaining permit coverage and compliance with the permit. The Montana WQA at 75-5-103(21), MCA, defines an ‘owner or operator’ as *a person* (emphasis added) who owns, leases, operates, controls, or supervises a point source. This language requires that a single owner or operator is responsible for the permit. A ‘person’ as defined in the statute, means, the state, a political subdivision of the state, institution, firm, corporation, partnership, individual or other entity. The rule will be amended to be consistent with the statute. In the past, the use of a multiple party system for determining permit compliance, payment of fees and communication in general, has proved difficult. This language does not prevent multiple entities from obtaining permit coverage for different aspect of the project for which they have responsibility or oversight. The Department has clarified and stream-lined the processes for transferring permit coverage from one owner/operator to another. The preamble has been modified to clarify this requirement.

Comment #2:

General Comment: Throughout the entire draft General Permit, there are references to project owner/operator, single owner/operator, permittee, person, primary project owner, etc. The multiple references to any person(s) obtaining coverage under this General Permit creates confusion as to the General Permit requirements for each owner and/or operator. MDT suggests all of these multiple references be consistently changed to “permittee.” “Permittee” should then be added to Part VI Definitions and include clarification of the “owner and/or operator” issue for the purpose of permitting under this General Permit. (MDT)

**Response:** These terms have been used in the proper context to make the text more readable. However, a check for the referenced terms stated in this comment was performed. Under the circumstances, the DEQ believes the General Permit is worded adequately. In some cases the use of "owner/operator" was used to make the statement or sentence more readable and less cumbersome than if "owner or operator" was completely stated out. The definition of owner/operator has been included in Part VI.

Comment #3:

General Comment: Throughout the entire draft General Permit, the terms “General Permit” and “permit” are used inconsistently causing confusion as to what is being referred. For instance, on page 8, Part I, Section G.2, of the draft General Permit, there are two references to “this permit”. In Part I, Section H.3.b, the last sentence says “...after which the “permit” will be terminated.” Is this the General Permit or the owner and/or operator’s authorization or an Individual Permit? There are several locations throughout the draft General Permit where different references are used for “the permit” creating confusion as to which permit is being referenced. MDT suggests the use of “General Permit” be consistently used. (MDT)

**Response:** As a delegated permitting authority under the federal Clean Water Act for the National Pollutant Discharge Elimination System (NPDES) the Department is required to incorporate the conditions meeting the requirements of 40 CFR 122.43, 122.44, 124.56 and 124.57 (see ARM 17.30.1342 and 17.30.1344). Specifically, ARM 17.30.1342, states that all conditions applicable to MPDES permit must be incorporated into the permit either expressly or by reference. The Department has chosen to incorporate these references expressly so as to not alter the intent of the federal regulation. MPDES standard conditions applicable to all permits tend to use the more generalized term "permit". For these reasons, this language has not been changed, as requested.

Comment #4:

General Comment: The draft General Permit appears to extend beyond the EPA's General Permit in three instances, and therefore, would be more stringent than federal requirements and fall under Sections 75-5-203 & 75-5-309, MCA. The first requirement being the implication that only one owner/operator may apply for the permit. As stated in General Comment 2, this would place unreasonable liability burden on MDT and is more restrictive than the federal General Permit. Second, by limiting the exclusion of maintenance activities to only sites less than 5 acres of disturbance, the General Permit is more stringent than the federal General Permit. EPA's General Permit for Discharge from Large & Small Construction Activities specifically excludes routine maintenance from the definition of both large & small construction. And third, EPA's General Permit has no requirement for a Professional Engineer to review and stamp the SWPPP if the area of disturbance is 20 acres or more. (MDT)

**Response:** Section 75-5-203, MCA and 75-5-309, MCA do not apply to discharge permits. These provisions apply to rules and regulations adopted by the Montana Board of Environmental Review. However, the DEQ has reconsidered the requirement to require a registered professional engineer to review and stamp the SWPPP, and has decided to remove this particular requirement and replace it with a requirement to use standard engineering practices. The remaining requirements have not been changed.

Comment #5:

Page 5, Part I, Section D.: This is the first reference to NOI (besides the table of contents) and "Notice of Intent" is never written out. NOI should be defined, and it should be clarified that the NOI serves as the application, which would eliminate the repeated use of "application (NOI)" throughout the draft General Permit. Also, the draft General Permit does not specify the contents of the NOI. The contents are required to be specified in the permit, as per 40 CFR 122.28(b)(2)(ii): "The contents of the notice of intent shall be specified in the general permit..." (MDT)

**Response:** "Notice of Intent (NOI)" is stated on the cover signatory page of the General Permit. The use of the term "application (NOI)" is used in a few locations within the General Permit not necessarily because the NOI is serving as an application, but because some rules, such as fee rules, do not differentiate between an application and an NOI. Based on 75-5-401(1)(c), as well as ARM Title 17, Chapter 30, Subchapters 11 and 13, there is a difference

**between an application and NOI with respect to permitting this type of MPDES-based discharge.**

**The draft General Permit does not need to specifically address the minimum contents of the NOI as these are already stated in ARM 17.30.1115 (Notice of Intent Procedures: Construction Activity). Also, an NOI Form may experience minor revisions during the five-year General Permit cycle, so DEQ wants to retain the flexibility to adjust specific NOI form items as necessary to ensure optimal permit program efficiency and function. This would ultimately benefit both the DEQ and regulated community.**

Comment #6:

Page 6, Part I, Section E., last sentence: Please clarify “fee”, annual fee or application fee or both. (MDT)

**Response: As specifically identified in the first sentence of this paragraph, the use of the term "fee" in the last sentence is for the "application (NOI) fee".**

Comment #7:

Page 7, Part I, Section F., first sentence: For MDT’s construction projects, there are times the contractors and/or MDT need additional borrow sites or waste sites to complete the project work, these sites are not always “directly contiguous to and directly associated with the original site or facility.” This seems to be an excessive limitation. Will these sites need separate NOI applications? Please clarify. (MDT)

**Response: The DEQ agrees with your point and has added language to this permit condition to make it more clear. At the end of the first sentence, the phrase ", except for support activities" was inserted.**

Comment #8:

Page 7, Part I, Section F., second sentence: Under ARM 17.30.201, major amendment is not defined. In the current General Permit, the addition of construction-related disturbance area(s) has no fee associated with it. Also, according to the ARM, major amendments would require public notice. This will place extreme hardships on construction activity timelines and contracts. There is also question about calling this a permit modification or amendment, as the permit will not be changed. It doesn’t seem appropriate to apply these regulations to general permits. Please clarify. (MDT)

**Response: The purpose of the second sentence in Part I.F. of the draft General Permit is to lend clarity and interpretation of MPDES rules with respect to amendments and the use of NOIs and General Permits. The fee for a major amendment is stated in ARM 17.30.201(5) schedule I.C. to be equal to the application fee, which in this case would be the "application (NOI)" fee. This is how the DEQ has implemented modification fees under the 2002-2006 General Permit as well. Like application and annual fees, a major amendment fee is assessed**

**to cover DEQ permit administration related to the change. Although it is uncertain which ARM reference the commenter is referring to, amending NOI authorizations obtained under a General Permit are not subject to public notice.**

Comment #9:

Page 7, Section F., second paragraph: Authorization for transfer is granted only after payment has been submitted. Will there also be a form, or other information, submitted? (MDT)

**Response: Part V.M. of the General Permit provides more details related to the use of a new Notice of Transfer form. ARM 17.30.1117 essentially allows a transfer if a new NOI form or similar is submitted. This Notice of Transfer form will accomplish such transfer of the owner or operator to another party.**

Comment #10:

Page 7, Part I, Section G: The current Notice of Termination form includes termination for the site reaching final stabilization and when “operators identified on original NOI form have changed.” This section removes the possibility of submitting a Notice of Termination if the operator has changed. Is there a new NOT Form? If so, will the new NOT form be made available as part of the draft General Permit for review? (MDT)

**Response: The DEQ will be revising a new NOT form which will only be used when "final stabilization" is achieved, as the new Notice of Transfer form will be used for change of owner/operator. The new NOT form is not included with, or subject to, the public comment associated with this General Permit.**

Comment #11:

Page 8, Part I, Section G.2., first sentence: “Any owner...of a site covered under this permit may request to be excluded from coverage under this permit by applying for an individual permit.” Does the owner have to wait for coverage under the individual permit or is exclusion granted simply by applying for the individual permit? Please clarify. (MDT)

**Response: MPDES permit coverage is granted on the effective date of the individual permit, after it has gone through required steps in rule, such as a public comment period. It is not granted on the date the application is submitted. Consequently, if for some reason the "storm water discharge associated with construction activity" is to be permitted under an individual permit, discharges would not be covered until the effective date of the individual permit. This essentially means the party would have to apply for and obtain discharge permit coverage under the individual permit prior the initiation of construction-related ground disturbance, as the actual rainfall and snowmelt pollutant discharges are unpredictable.**

Comment #12:

Page 9, Part I, Section H.3.b, first sentence: Please address the use of the words “suspend . . . the permit”. This is another example of the need to clarify the use of “permit” versus the use of “General Permit”, and goes back to the question regarding “coverage”, “authorization”, etc. (MDT)

**Response: As previously explained, this is a standard fee condition placed in all MPDES permits, and as such, the word "permit" is used. In the case of this General Permit, authorization for "storm water discharge associated with construction activity" is obtained by submitting a complete Notice of Intent package. A complete Notice of Intent Package includes the submittal of the initial annual fee for that calendar year. If this isn't submitted, the NOI Package is not complete and discharge authorization does not occur until it is brought to a complete status. Consequently, permit coverage is suspended when incomplete NOI Packages are submitted.**

Comment #13:

Page 13, Part III, Section C.3., last sentence: “...shall be retained by the permittee for a minimum of 3 years from the date the site is finally stabilized, or longer if requested by the Department.” Will this request be made in writing by the Department or verbally? Will the request be made at the end of the 3 years or at the time of NOT submittal? Please clarify. (MDT)

**Response: Such a request would be made in writing. When the request is made depends on the circumstances, and could be at any time. This particular condition in this General Permit is primarily based on ARM 17.30.1342(10)(b). However, such a records retention extension request has rarely if ever been exerted by the DEQ for this type of storm water discharge permit authorization. If it should be, it is expected it would typically be made prior to permit authorization termination.**

Comment #14:

Page 14, Part IV, Section C., first sentence: Will the notification that the SWPPP is not in compliance be made verbally or in writing? Please clarify. (MDT)

**Response: The notification would be made in writing.**

Comment #15:

Page 16, Part IV, Section G.1.f., last sentence: “If the discharge is to a municipal separate storm sewer, the location of any storm sewer discharge into receiving state surface waters;” Does this discharge apply to any MS4 or just permitted MS4’s? Are the locations required for any storm sewer discharge into receiving state surface waters within the entire MS4 as it reads, or just those within the construction boundaries? Please clarify. (MDT)

**Response:** This requirement applies to all "municipal separate storm sewers" (MS4s). "Municipal separate storm sewer" is defined in ARM 17.30.1102(13). The term includes the permitted Small MS4s as well as other unpermitted MS4s.

**The permittee must address this requirement for storm water discharges from the construction activity's "larger common plan of development or sale", or whatever portion of the total construction activity the particular NOI Package submittal pertains to (such as within MDT's right-of-way). If storm water runoff is discharging into an MS4, whether it be MDT's MS4, a permitted MS4, or an unpermitted MS4, the SWPPP must provide "the location of any storm sewer discharge into receiving state surface waters". In other words, all regulated "storm water discharges associated with construction activity" must have the discharge flow path described to the receiving state surface water, whether it be through an MS4 or not.**

Comment #16:

Page 16, Part IV, Section G.1.g.: "...support activities related to a construction site." Suggest changing to "...support activities related to the permitted construction site." (MDT)

**Response:** The DEQ believes the current wording to be adequate in consideration of all potentially regulated "storm water discharges associated with construction activity". The DEQ is not permitting the "construction site", we are permitting the storm water discharges from the construction activity's "larger common plan of development or sale", or whatever portion of the total construction activity site the particular NOI package submittal pertains to.

Comment #17:

Page 17, Part IV, Section G.2.c: MDT requests removal of this section, or restatement of this section to address removal of temporary control structures in specific areas of the project that have reached final stabilization. (MDT)

**Response:** This requirement as it is written is intended to allow the removal of temporary control structures if final stabilization in a given area has been achieved, provided the particular BMP is not needed anymore. It depends on the BMP being used, what it's intended function is, and whether upland erosion and/or sediment control may be partially dependent on the BMP even though final stabilization is achieved in the area of the actual BMP. As this SWPPP requirement has served reasonably well for years, and allows some flexibility depending on the circumstances, the DEQ does not feel it is necessary to revise it at this time.

Comment #18:

Page 18, Part IV, Section J., first sentence: "If significant sediment results from the failure of erosion or sediment control measures, the material must be cleaned up and placed back on the site or disposed of in an acceptable manner." MDT suggests this sentence be rewritten to: "If

significant sediment results from the failure of erosion or sediment control measures, the material *should be cleaned up and placed back on the site, disposed of in an acceptable manner, or handled in a method approved by DEQ.*” There are times when the most environmentally sound method is to stabilize the sediment in place rather than create additional disturbance removing the sediment. (MDT)

**Response: Based on the comment, the DEQ has amended the language in this permit condition, section will now read: If "significant sediment" (as defined in Part VI of this General Permit) results from the failure of erosion or sediment control measures, the material should be cleaned up and placed back on site or disposed of in an acceptable manner which minimizes any impact to state surface waters. The sediment must not be washed into the storm sewer(s), drainageway(s), or receiving state surface waters. The permittee must document the clean-up action in accordance with the inspection and monitoring requirements of Part III.C of this permit. This requirement does not waive any obligations for the permittee to obtain other permits or permissions to clean up the "significant sediment."**

Comment #19:

Page 19, Part V, Section A.: This section has been changed from the existing General Permit. Is this section referring to the General Permit or an Individual Permit or to the specific NOI application? Please clarify. (MDT)

**Response: This is a required MPDES standard condition. Please refer to the response to Comment #3.**

Comment #20:

Page 19, Part V, Section B.: This section seems to be in conflict with the July 1, 2007 renewal date contained elsewhere in the draft General Permit. MDT recommends replacing the language in this section with the draft General Permit language, Part I, Section E. (MDT)

**Response: This is a required MPDES standard condition. It would apply at the expiration of this new General Permit. In accordance with ARM 17.30.1313, the Department has administratively extended the expiration date of the 2002-2006 General Permit, however, permittees with coverage under the expired General Permit (12/31/06) will be required to reapply to maintain permit coverage under the reissued General Permit.**

Comment #21:

Page 20, Part V, Section H.: Another section where the inconsistent use of the term permit or General Permit leads to confusion. Will the “permit” be terminated or will “coverage” or “authorization” under this permit be terminated? Please clarify. (MDT)

**Response: This is a required MPDES standard condition. Please refer to the response to Comment #3.**



Comment #22:

Page 20, Part V, Section I.: MDT requests a 5<sup>th</sup> item be added to this list requiring the Department representative to make a reasonable effort to contact or notify the owner and/or operator prior to an inspection. This would provide for an appropriate MDT representative to be present and to also address safety concerns MDT and contractors have with inspectors entering sites. (MDT)

**Response: This is a required MPDES standard condition, and is based on ARM 17.30.1342(9) and 75-5-603, MCA. The requirement is necessary as a condition of state delegation under the federal Clean Water Act and is contained in all MPDES discharge permits. The DEQ's believes that this is an important and required tool for assessing compliance at permitted sites. Consequently, no changes have been made to the General Permit based on your comment. DEQ personnel will check in with the permittee or their representative if present at the construction site, and ask if they would like to accompany the inspector. Also, we usually do attempt to schedule an inspection ahead of time with the permittee in most situations.**

Comment #23:

Page 20, Part V, Section J.: This section has been changed from the current General Permit to not include SWPPP's and Notices of Termination in the signatory requirements, only the application (NOIs) are included. Do the SWPPPs and Notices of Termination no longer require the signatory requirements in this draft General Permit? (MDT)

**Response: This is a required MPDES standard condition. The 2002-2006 General Permit was effective prior to rule changes in 2003 which resulted in the new language. These requirements are consistent with federal rules. Please note that Part J.1. pertains to actual applications (NOIs), whereas Part J.2. pertains to minimal signatory requirements for SWPPPs and Notices of Termination.**

Comment #24:

Page 21, Part V, Section J.1.c., last sentence: "A principal executive officer of a federal agency includes:" This sentence should include the other public agencies listed in the previous sentence and be rewritten to: "A principal executive officer of a *municipality, state, federal, or other public agency* includes:" (MDT)

**Response: This is a required MPDES standard condition, and is based on ARM 17.30.1323.**

Comment #25:

Page 21, Part V, Section J.3.: This language has been changed from the current General Permit. The requirement to submit changes in authorization prior to the "application (NOI)" is not realistic. The former language indicating "reports, information, or SWPPPs" should be included. MDT recommends that the language from the previous General Permit be included as it is more

applicable to storm water discharges associated with construction activity and the permitting process. (MDT)

**Response: This is a required MPDES standard condition, and is based on ARM 17.30.1323.**

Comment #26:

Page 22, Part V, Section K.: This section is new to this draft General Permit and contradicts Part I.F. Modifications to NOIs. MDT requests this section is not applicable to the Construction General Permit and should be removed. (MDT)

**Response: This is a required MPDES standard condition.**

Comment #27:

Page 22, Part V, Section L.: This section is new to this draft General Permit and does not seem applicable to the Construction General Permit. MDT requests this section be removed. (MDT)

**Response: This is a required MPDES standard condition.**

Comment #28:

Page 22, Part V, Section M.: This section has been changed from the current General Permit and seems to refer to a Notice of Transfer form. Is there a new Notice of Transfer form? If so, will the new Notice of Transfer form be made available for review with this draft General Permit? This section doesn't seem to be consistent with ARM 17.30.1117. MDT recommends the use of the current General Permit language in Part V, Section M, for this section. (MDT)

**Response: There will be a new Notice of Transfer form which the DEQ will develop prior to the effective date of this General Permit. The Notice of Transfer form is not included with, or subject to, the public comment associated with this General Permit.**

Comment #29:

Page 22, Part V, Section N.: This section is new to this draft General Permit and does not seem applicable to the Construction General Permit. MDT requests this section be removed. (MDT)

**Response: This is a required MPDES standard condition.**

Comment #30:

Page 22, Part V, Section O.: This section is new to this draft General Permit and contradicts the reporting requirements in Part III.B. MDT requests this section be removed. (MDT)

**Response: This is a required MPDES standard condition.**

Comment #31:

Page 23, Part V, Section P: This section is new to this draft General Permit and does not seem applicable to the Construction General Permit. MDT requests this section be removed. (MDT)

**Response: This is a required MPDES standard condition.**

Comment #32:

Page 23, Part V, Section Q: This section is new to this draft General Permit and does not seem applicable to the Construction General Permit. MDT requests this section be removed. (MDT)

**Response: This is a required MPDES standard condition.**

Comment #33:

Pages 23 and 24, Part V, Section R: This section is new to this draft General Permit and does not seem applicable to the Construction General Permit. MDT requests this section be removed. (MDT)

**Response: This is a required MPDES standard condition.**

Comment #34:

Pages 24 and 25, Part V, Section S.: This section is new to this draft General Permit and does not seem applicable to the Construction General Permit. MDT requests this section be removed. (MDT)

**Response: This is a required MPDES standard condition.**

Comment #35:

Page 25, Part V, Section T.: This section is new to this draft General Permit and should cite the actual regulation. Additionally, the language in this section is not consistent with the actual language in Sections 75-5-631 or 75-5-632, MCA. Please address the inconsistency. (MDT)

**Response: This is a MPDES standard condition. This condition provides a summary of potential civil and/or criminal penalties based on the statutes. Statutory citations need not be in MPDES permits, but they do form the basis for requirements in MPDES permits. MPDES permits may not necessarily use the exact quoted language found in statute and/or regulation, but instead may use slightly altered language to interpret, simplify, and/or clarify such requirements for the particular MPDES permit.**

Comment #36:

Page 25, Part V, Section U.: This section has been changed from the current General Permit and is

not consistent with the language in Section 75-5-633, MCA. This section should cite the applicable regulation and consistent language with the regulation should be used. Please address. (MDT)

**Response: This is a MPDES standard condition. This condition provides a summary of potential civil and/or criminal penalties based on the statutes. Statutory citations need not be in MPDES permits, but they do form the basis for requirements in MPDES permits. MPDES permits may not necessarily use the exact quoted language found in statute and/or regulation, but instead may use slightly altered language to interpret, simplify, and/or clarify such requirements for the particular MPDES permit.**

Comment #37:

Page 25 & 26, Part V, Section X.: This section has been changed from the current General Permit and does not seem to be applicable to the Construction General Permit. MDT requests replacing this section with the original language in the current General Permit, Part V, Section Q. (MDT)

**Response: This is a required MPDES standard condition.**

Comment #38:

Preamble, paragraph 4: Please define "various wastes". (MDT)

**Response: There is no formal definition for "various wastes", nor does the DEQ believe it is necessary for further explanation of word usage pertaining to this Preamble. The Preamble does not contain directly enforceable permit conditions. However, wastes could include any generated at a construction site including "other wastes" as defined in 75-5-103(19), MCA.**

Comment #39:

Page 4, Section C.1. & C.2.: Please define "specific source". (MDT)

**Response: "Source", and consequently "specific source", means a "storm water discharge associated with construction activity" as described in Part I.B. of the General Permit, and as formally defined in Part VI of the General Permit and ARM 17.30.1102(28).**

Comment #40:

Page 6, Section E.: Please define "source". (source is also used in the heading of Part I.B, C & D and seems to mean something different with each use) (MDT)

**Response: "Source" is a "storm water discharge associated with construction activity" as described in Part I.B. of the General Permit, and as formally defined in Part VI of the General Permit and ARM 17.30.1102(28).**

Comment #41:

Page 10, Part II, Section F.: Please clarify what a “valid” Notice of Termination Form is? (MDT)

**Response: The term "valid" is used in the conventional sense. It means a properly completed Notice of Termination form.**

Comment #42:

Definition for “Owner” removed from the current General Permit. (MDT)

**Response: The definition for "Owner" by itself was never in the current 2002-2006 General Permit, but a permit-specific definition of "Operator" was. Assuming this is what the commenter meant, we are now switching to a different system of permitting where this definition is no longer necessary. Also, please see the response to Comment #1.**

Comment #43:

Definition for “Significant Sediment” has changed from the current General Permit. Specifically, the new definition uses the term “other wastes”. Please define “other wastes”. Also, the definition for “significant sediment” refers to “state water” and “state surface water”, these have two different definitions. Please clarify. (MDT)

**Response: "Other wastes" is defined in 75-5-103(19), MCA. For clarity, consistency, and accuracy, the term "state water" is revised to also be "state surface water".**

Comment #44:

Please write out the “State Water” definition. (MDT)

**Response: This term is defined in the Montana Water Quality Act and is not repeated here. Part VI does include the definition of state surface water which is used throughout the permit.**

Comment #45:

Page 29, Part VI, Definition 18(c): ARM 17.30.1102(29) refers to “Storm Water Discharge Associated with Industrial Activity”. This should not apply to the Construction General Permit. MDT requests Subsection c be removed from the definition. (MDT)

**Response: The definition for "storm water discharge associated with construction activity" is that found in ARM 17.30.1102(28), which includes all the language specified in reference to requirements in ARM 17.30.1102(29). Furthermore, Part VI.18.c. of the General Permit is ultimately based on federal requirements, although the similar federal requirements are broken out differently.**

Comment #46:

Part III, Section A.3. of the permit currently requires inspections within 24 hours after any storm event of greater than 0.50 inches of rain per 24-hour period. Such a requirement is not practical for most linear projects due to limited access as these projects can be in remote areas or subjected to restrictive landowner arrangements. Entering the bare or young vegetated project area during wet post storm event conditions is also detrimental to the rehabilitation of those areas due to damage to the young vegetation and rutting of soil creates channeling exposure for future storm events. WBI feels that the requirements for post storm event inspections should recognize these circumstances surrounding linear projects and allow inspections to occur when ground conditions are such that entering the project area will not cause additional surface damage. (WBI)

**Response: Based on comment, two changes have been made to Part III.A.3. of the General Permit. The word "all" has been deleted from the beginning of the sentence, and the word "storm" has been changed to "rainfall" at the end of the sentence.**

**As linear projects for pipelines or cables have a very long and relatively thin swath of disturbance, they have often demonstrated the need to focus more on the critical areas, and more generally on the less critical areas in permit documentation. For example, areas with relatively steep grades, erosive soils, or those around surface water would be considered more critical areas. Inspections should be more focused on these. Also, the severity of the rainfall storm event intensity should influence inspection thoroughness as well. The DEQ cannot waive performing inspections when they may be necessary, and we need to require self-monitoring inspections as consistently and fairly as possible to all regulated parties. However, depending on the circumstances, the permittee can prioritize critical areas to inspect and perhaps perform representative inspections for less critical areas if accessibility is a problem. Also, permittees need to ensure contracts and arrangements are secured up front to allow ongoing inspections as necessary.**

Comment #47:

The monthly required inspections in Part III, Section A.4 are impractical and unnecessary for linear construction projects after completion of construction due to the aforementioned access and landowner issues as well as the nature of the project areas. Since the permittees for linear projects are very seldom the landowner of the project areas, the access issue becomes a greater factor in post-construction inspections as land is returned to its original use and many access agreements with landowners lapse once construction is completed, thereby, leaving the project right of way as the only means of access for the permittee.

Due to public safety and landowner concerns, most natural gas transmission and gathering pipelines are intentionally built in remote areas, as previously mentioned, and many of these locations are in arid regions requiring up to five years to stabilize. WBI currently has active storm water permits dating back as far as 2001 on more than 500 miles of pipeline in five states, most of which are located in Montana, including our 2003 Grasslands Pipeline. Dispatching inspection personnel every month to these areas for such an extended duration is impractical.

While biweekly inspection requirements during the construction phase are certainly a necessity, monthly inspections after the construction of linear projects is unnecessary as these project areas are narrow corridors of soil disturbance with less potential for erosion, particularly when proper controls are applied. Also, by the end of the construction phase, most problem or potential problem areas have been identified and addressed. An inspection at the beginning and end of each growing season and after storm events once wet conditions diminish should be adequate to monitor these linear project areas once actual construction activities are completed. (WBI)

**Response: Please see the response to Comment #46.**

Comment #48:

WBI also questions the relevance of Part IV, Sections F. and G. 1 .c. for linear projects. The need for the review of a SWPPP by a professional engineer for a linear project such as a pipeline is unnecessary as potential storm water runoff is dispersed over multiple outfalls and can be addressed with the recurring application of relatively simple control measures. Additionally, the site map requirements in Part IV, section G. 1 .c. may be an ineffective means of conveying such information within the SWPPPs of linear projects due to the potentially vast distances or fragmented nature of many linear projects. While the utilization of U.S.G.S. topographical map should be included in the SWPPP, most of the required information from this section may be better communicated through tables or documents referencing route footage or stationing. (WBI)

**Response: The DEQ has revised Part IV.F. of the General Permit to require the use of good standard engineering practices instead of the review and stamping of the SWPPP by a registered professional engineer.**

**Concerning the site map requirements, as stated above, linear projects for pipelines or cables have a very long and relatively thin swath of disturbance. Consequently, in SWPPP site maps, they have focused more on the critical areas, and more generally on the less critical areas. For example, areas with relatively steep grades, erosive soils, or those around surface water would be considered more critical areas. SWPPP site maps may also be more general in less critical areas with narrative information being used to address some information normally shown on the site map. In part, this could include site stationing of BMPs and other information provided that narrative descriptions, specifications, and information can substitute for what the site map would normally portray. The DEQ has allowed some flexibility with respect to long lineal projects of relatively thin disturbance, especially as SWPPPs are developed for the primary use of the permittee in the field.**

Comment #49:

The Contractors Association believes that the revisions to the General Permit, proposed General Permit, have some unintended ambiguities and inconsistencies, and these lead to some unintended consequences which actually will decrease protection of the resource. MCA requests the ability to meet with DEQ and other interested individuals and organizations regarding how to fix these, what we see as problems with the proposed rules, sometime before the final version comes out. (MCA)

**Response:** Most requirements in the proposed General Permit are the same as in previous versions of this General Permit MTR100000. Changes made to this General Permit are intended to improve function and efficiency of permitting storm water discharges in consideration of demonstrated administrative and compliance problems over many years. As DEQ has regulated almost 2500 storm water discharges associated with construction activity for a wide variety of projects, we have observed some clear patterns and issues manifest themselves since the implementation of this portion of the MPDES permit program. This General Permit represents an ongoing evolutionary effort to adapt and improve towards a better and more efficient permitting system.

The public process provided in rule, as was followed in this General Permit reissuance process, provides a fair and ample opportunity for all concerned parties to express themselves on a level playing field. We also interact with the regulated community or their representatives on a daily basis and have informally discussed potential issues, needs, and solutions over the years. At this point in time, the DEQ believes we need to move forward and formally follow our public process requirements in order to complete this process in a legal and fair manner. However, the DEQ is always willing to meet with the regulated community on issues they may have.

Comment #50:

We do see that there is some concerns with the rule, as indicated by MCA, by the representative from MCA, and we would be willing to work with the Department to try to correct those. (MDT)

**Response:** Department staff met with a representative of the MCA and MDT and will continue to meet to discuss these issues as necessary. In addition to these meetings, the Department has provided training to individual contractors and at other training events around the state.